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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 15th July, 2021

No. 13/1/9783-HII(2)-2021/7406-A.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 37/2017, dated 01.06.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANJU, D/O SHRI PIARY LAL, HOUSE NO. 314, SECTOR 29-A, CHANDIGARH (Workman)

AND

1. MUNICIPAL CORPORATION THROUGH ITS COMMISSIONER, SECTOR 17, CHANDIGARH.
2. MEDICAL OFFICER (HEALTH), 30 BAYS BUILDING, SECTOR 17, CHANDIGARH.
3. COL. S.P. PURI, M/S SUDARSHAN FACILITIES PRIVATE LIMITED, REGIONAL OFFICE: SCO NO. 845, 1ST FLOOR, MANIMAJRA, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that she joined the office of management No. 2 in June 2005 on daily wage basis at a fixed of ₹ 2,680/- per month and continued upto June 2009 and she was getting a salary of ₹ 3,000/- per month. Thereafter a break in service was given. Again she was appointed on 01.01.2013 at ₹ 5,822/- and she continued in service without break upto 31.10.2015. On 01.11.2015 it was her last day and the next day i.e. 02.11.2015, the services of the workman were retrenched without notice and without paying the compensation as required under Section 25-F of the ID Act. During the above period the salary of the workman was increased to ₹ 7,406/- with effect from 10.04.2015 till her retrenchment. The

(495)

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Jaiinder Kumar

On 27/07/2021

15:29:18 IST

Reason: Public

Location:

salary of the workman was paid by way of cheque in the banks i.e. State Bank of Patiala, Oriental Bank of Commerce and HDFC Bank. She worked under Shri Parveen Kumar, Multipurpose Health Worker (Sanitary Inspector), Chief Sanitary Inspector Shri Rajbir Singh Hooda and Shri Ishwar Chand, employee of MOH, who used to mark attendance of the workman. Duty hours of the workman was eight hours daily. The attendance was marked by MPHW, Chief Sanitary Inspector and Health Supervisor. Retrenchment of the workman is illegal and in violation of Section 25-F of the ID Act as no notice and no compensation was given to the workman before retrenchment of her services. The management had employed junior persons in violation of Section 25-G of the ID Act. The management had adopted pick & choose method and also violated the principles of 'last come first go'. Ultimately, it is prayed that retrenchment dated 02.11.2015 be set aside and the workman be reinstated back in service with all consequential benefits.

3. Management No.1 & 2 contested the case of the workman and filed written statement raising preliminary objection that the workman had not impleaded the contractor under whom she was working. The work related to outsourcing of manpower of 692 Safai Karamcharies to the Medical Officer of Health, Municipal Corporation, Chandigarh for performing the duties for sanitation and conservancy services, was given to the contractor M/s Sudarshan Facilities Private Limited formerly called Keshav Security Services Private Limited, 18, LSC, 2nd Floor, Pushp Vihar, New Delhi - 110062 and Second address:- Regional Office at S.C.O. No.845, First Floor, Manimajra, Union Territory Chandigarh. The workmen were employed by the above mentioned contractor and not by the answering management. As per terms & conditions of the contract / agreement entered between the answering management and the contractor, the persons deployed by the contractor for the work shall be his employees for all intents & purposes and any person so supplied by the contractor, if does not come upto the mark or performs his duties properly or indulges in any unlawful act or disorderly conduct, the contractor shall take suitable action against such employees. In the case of the workman the office of the answering management had received a complaint from the Field Supervisory Staff that she was not performing her duties but instead her husband did her work and she also used to misbehave with the field staff. Upon which the workman was called to explain her position within three days *vide* letter No. MOH/SS/2015/12488, dated 26.10.2015 but she gave her reply on 09.11.2015 which was found unsatisfactory. Thereafter she got herself absented from duty with effect from 02.11.2015 and absent report was sent to her service provider to seek her replacement and the service provider had replaced the workman with a new incumbent on 20.11.2015. On merits, it is pleaded that the workman was not employee of the Municipal Corporation, Chandigarh. The workman was not employed by the contractor and not by the answering management. The answering management had never employed the workman and have neither removed the workman from service as she was employee of the contractor namely M/s Sudarshan Facilities Private Limited. The answering management had never paid salary to the workman. The answering management used to pay the amount of the bills raised by the contractor. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. Management No.3 contested the case of the workman and filed written statement raising preliminary objection that the workman was working with management No.1 & 2 since 01.07.2015. *Vide* letter No.MOH/ SS/2015/12997, dated 16.11.2015, management No.1 & 2 informed the answering management that she was absenting from her duties with effect from 02.11.2015 and her replacement be provided and accordingly her replacement was provided. On merits, it is pleaded that the services of the workman were never terminated by the answering management as alleged by the workman. The answering management had not violated any provisions of the ID Act. The workman had admitted her attendance was marked by management No.1 & 2. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman *qua* answering management be dismissed.

5. The workman filed replication reiterating the averments of her case and denied the averments made in written statements. From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW

2. Relief.

6. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, management No.1 & 2 examined Shri Ravi Sharma-Junior Assistant as MW1 and management No.3 examined Col. S. P. Puri (Retd.) - Regional Director as MW2. Learned representative for management No.1 & 2 and management No.3 closed the evidence.

7. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 :

8. Onus to prove this issue was on the workman and to discharge the same, learned representative for the workman examined the workman as AW1, who deposed that she was appointed as **Safai Sewak** in the office of **Medical Officer Health (Municipal Corporation)** in June 2005 on daily wages at a fix pay of ₹ 2,680/- per month. In June 2009 the salary was increased to ₹ 3,000/- per month and with effect from 01.01.2013 the salary was increased to ₹ 5,822/- per month and she continued working upto 01.11.2015. On 10.04.2015 her salary was further increased to ₹ 7,406/- per month and on 02.11.2015 she was retrenched from service without compliance of Section 25-F of the ID Act and without payment of compensation. She further deposed that her juniors were retained in service and they are still continuing in service and some of them have been made regular. Her attendance was recorded by MPHW, Chief Sanitary Inspector and Health Supervisor and her duty roaster was also fixed by the officials of the Municipal Corporation. Her salary was also paid by them. She also deposed that she was retrenched as she did not agree to their evil motives and filed complaint to the Medical Officer Health, who asked her action would be taken against guilty officers but no action was taken rather her services were retrenched. She had proved her service record, obtained under RTI Act, 2005 *vide Exhibit 'W1' to 'W5'*.

9. Learned representative for the workman has argued that the workman was appointed in June 2005 in the office of Medical Officer Health, Municipal Corporation on daily wages at ₹ 2,680/- per month by advertising the vacancy through walk in interview and after filling up of form and necessary approval by the Medical Officer of Health. Her salary was increased to ₹ 3,000/- in June 2009 then to ₹ 5,822/- on 01.01.2013 then to ₹ 7,406/- on 10.04.2015 and the workman continued working upto 02.11.2015 when her services were retrenched without payment of compensation in violation of provision of Section 25-F of the ID Act. He further argued that the workman was retrenched on the basis of complaint dated 19.10.2015 and the final order was passed by Dr. P. S. Bhatti, Medical Officer Health dated 12.11.2015 for replacement of the workman. It is further argued that the Medical Officer of Health had over all control over the workman and other workmen. The Head Jamadar marks the presence of all the workmen countersigned by Sanitary Inspector, Chief Sanitary Inspector and thereafter the attendance sheet is sent to the Medical Officer of Health for raising the bill and salary of the workmen through the contractor. The Medical Officer of Health has over all control over the workmen i.e. fixing of duty rosters, supervision, transfer and performance through Sanitary Inspector, Chief Sanitary Inspector, Jamadar. Management No.1 & 2 are the principal employer and the contractor's role is an

eye-wash only. Learned representative for workman referred Section 7, 9, 10, 12 of the Contract Labour Regulation & Abolition Act, 1970 and further argued that the Contract Labour Regulation & Abolition Central Rules, 1971 Chapter - III deals with the process of registration and licensing, as contained in Rule 17, 18, 21. He further referred to Rule 27 which deals with the validity of licence for 12 months only and also referred to Rule 74 and 75. Further learned representative for the workman referred to cross-examination of MW1 Shri Ravi Sharma that he had not brought any record from the date of joining till the retrenchment of the workman as the workman is employed with the contractor. It is admitted by MW1 no inquiry, notice or compensation in lieu of retrenchment was given to the workman. The contract dated 14.10.2015 Exhibit 'M2' was executed between management and contractor on 14.11.2015 whereas the workman was in employment of management No.1 & 2 continuously since June 2005 to 20.11.2015 and the contract is a sham transaction. He has placed reliance citation **Voith Paper Fabrics India & Others Versus Presiding Officer, Industrial Tribunal-cum-Labour Court-II & Others, 2020(4) SCT 106 (P&H); Haryana State Electricity Board Versus Suresh, 1992(2) SCT 600 (SC); JCB India Limited Versus Omi Singh & Others, 2016(3) SCT 725; Hari Palace Ambala City Versus Presiding Officer, Labour Court & Another, 1979(81) PLR 720 (P&H) (Full Bench); Kuldeep Singh Versus Presiding Officer, Labour Court, Panipat & Others, CWP No.13548 of 1996 decided on 24.02.2017 and Magar Dass Versus Industrial Tribunal, Patiala & Others, CWP No.10267 of 2012 decided on 04.12.2015.** He prayed for setting aside retrenchment and reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, learned representative for management No.1 & 2 examined Shri Ravi Sharma - Junior Assistant as **MW1**, who deposed that he has been duly authorised by the Medical Officer, Health, Municipal Corporation, Chandigarh, being the competent authority, to depose in the present case and authorization is Exhibit 'M1'. The claim of the applicant-workman is not maintainable against the Municipal Corporation, Chandigarh as the workman had not impleaded proper and necessary parities i.e. the contractor under whom she was working. Work related to **outsourcing of manpower** of 692 Safai Karamcharies to the Medical Officer of Health, Municipal Corporation, Chandigarh for performing the duties for sanitation and conservancy services, was given to the contractor M/s Sudarshan Facilities Private Limited formerly called Keshav Security Service Private Limited. The workman was employed by the above mentioned contractor and not by management No.1 & 2. The **contract** awarded to the contractor is **Exhibit 'M2'**. He further deposed that as per terms & conditions of contract / agreement entered between management No.1 & 2 and the contractor, the persons deployed by the contractor for the work shall be his employees for all intents & purposes. Any person so supplied by the contractor if does not come upto the mark or performs his duties properly or indulges in any unlawful act or disorderly conduct, the contractor shall take suitable action against such employee and in case any complaint / defect is pointed out, the contractor shall immediately replace the particular person so deployed. He also deposed that office of the management had **received a complaint** from the field supervisory staff that she was not performing her duties but instead her husband did her work and she also used to misbehave with the field staff. The workman was called to explain her position within three days *vide* letter No.MOH/SS/2015/12488, dated 26.10.2015 but she gave her reply on 09.11.2015 which was found unsatisfactory. Thereafter the workman got **absented from duty with effect from 02.11.2015** and the absent report was sent to her service provider (contractor) to seek her replacement and upon that the services provider had replaced the workman with a new incumbent on 20.11.2015. Neither the management had employed nor removed the workman from his services. He had proved **copy of complainant bearing diary No.216 dated 19.10.2015 Exhibit 'M3', letter dated 26.10.2015 Exhibit 'M4', reply dated 09.11.2015 is Exhibit 'M5', complaint dated 02.11.2015 Exhibit 'M6', absent report with effect from**

02.11.2015 Exhibit 'M7', letter for replacement to M/s Sudharshan Facilities dated 16.11.2015 Exhibit 'M8' and replacement by agency dated 20.11.2015 Exhibit 'M9'. He further deposed that as of now the contract of M/s Sudarshan Facilities Private Limited (contractor) is *not in existence* as the contract has expired on 28.02.2017.

11. Learned representative for management No.1 has argued that the present claim statement deserves to be dismissed as per terms & conditions of the contract / agreement, the person deployed by the contractor for the work shall his employee for all intents & purposes so no relationship exists between employer-employee between management No.1 & 2 and the workman. The workman was not performing her duties properly so supervisor staff made complaint that the workman was not performing her duties rather her husband used to do her work and also wrote letter with regard to her misbehavior with the field staff and explanation was called from the workman, which was found unsatisfactory and the workman absented from duty i.e. 02.11.2015 and her absent report was sent to the service provider and the contractor replaced the workman with new incumbent with effect from 20.11.2015 so no retrenchment has been made by management No.1 & 2. The contract of management No.3 has already been expired on 28.02.2017 and there is no violation of Section 25-F & 25-G of the ID Act on the part of management No.1 & 2. Further contract act referred by the workman is not applicable here in deciding this case and citation referred also not applicable. He prayed for dismissal of the present industrial dispute *qua* management No.1 & 2.

12. Learned representative for Management No.3 examined Col. S. P. Puri (Retd.) - Regional Director as MW2, who deposed that management No. 3 is the service provider to various Government as well as to the other organization as per their requirement. The workman had not claimed relief *qua* management No.3. The workman was working with management No. 1 & 2 since 01.07.2015 and *vide* letter No.MOH/SS/2015/12997, dated 16.11.2015 management No.1 & 2 informed management No.3 that the workman was absenting from her duties with effect from 02.11.2015 and her replacement may be provided and accordingly her replacement was provided.

13. Learned representative for management No.3 has argued that management No.3 was awarded the contract for one year and it had not retrenched the services of the workman rather during the course of arguments he has pleaded no objection in case the services of the workman are restored by management No.1 & 2.

14. I have considered the rival contentions of both the sides, I find that it is nowhere disputed that the workman earlier joined the office of management No.2 on daily wage basis in June 2005 and continued upto June 2009. She was getting the salary of ₹ 3,000/- thereafter the workman was again appointed on 01.01.2013 at fixed pay of ₹ 5,822/-continued without any break upto 31.10.2015. In order to prove her case the workman got information under Right to Information Act, 2005 Exhibit 'W1' and she has produced Exhibit 'W2' copy of attendance register from January 2013 to August 2015, Exhibit 'W3' attendance register from September 2015, Exhibit 'W4' attendance register from October 2015, Exhibit 'W5' is the copy of bank account passbook of the workman. On the other hand, management No.1 & 2 tendered into evidence the authority letter of Shri Ravi Sharma - Junior Assistant, Medical Officer of Health, Municipal Corporation, Chandigarh Exhibit 'M1' for appearing before the Presiding Officer, Labour Court, Union Territory Chandigarh and to produce requisite record, submit affidavit and to depose in the present case in hand. Copy of agreement dated 14th October, 2015 between M/s Sudarshan Facilities Private Limited and the Medical Officer Health, Municipal Corporation, Chandigarh Exhibit 'M2', Exhibit 'M3' is copy of letter dated 14.10.2015 written by Shri Harkesh - S.J., to Health Officer, Municipal Corporation, Sector 17, Chandigarh with regard to complaint of the workman, Exhibit

'M4' is explanation sought from the workman by the Medical Officer of Health, Municipal Corporation, Exhibit 'M5' is reply filed by the workman to the Medical Health Officer, Exhibit 'M6' is copy of the complaint dated 02.11.2015 by Shri Harkesh - S. J. to Medical Officer Health, Exhibit 'M7' is absent report made by Shri Harkesh - S.J. to Medical Officer of Health, Exhibit 'M8' is absent report dated 16.11.2015 of Safai Karamchari Anju D/o Shri Pyare Lal to M/s Sudarshan Facilities Private with effect from 02.11.2005. Exhibit 'M9' is letter of M/s Sudarshan Facilities Private Limited whereby Shri Saurabh Kumar S/o Shri Suresh Kumar has been appointed as Safai Karamchari in place of Anju D/o Shri Pyare Lal.

15. From the perusal of the oral & documentary evidence on record, it is crystal clear that first of argument of learned representative for the workman that the workman retrenched on the basis of complaint dated 19.10.2015, does not inspire any confidence. Before proceeding further let us peruse the terms of agreement dated 14.10.2015 Exhibit 'M2' in Clause 11 & 20, which is as under :—

"11. Relationship between the employer and staff : *The persons deployed by the contractor for the work shall be his employees for all intents and purposes and in no case, there shall be any relationship of employer and employees between the said persons and the Corporation on account of such employment of said person.*

20. Deficiency in service/Disobedience by staff :

- (a) *If during the pendency of contract any worker is found inefficient the Contractor will have to replace him with another suitable worker.*
- (b) *Penal recovery at double the amount on quoted/allotted rates shall be made if services of any of categories not provided by the contractor."*

So it is crystal clear that there was contract agreement between the Municipal Corporation, Chandigarh through Medical Officer of Health, Municipal Corporation, Chandigarh with M/s Sudarshan Facilities Private Limited and as per Clause 11 of the same, the persons deployed by the contractor for the work shall be his employee for all intents & purposes and in no case, there shall be any relationship of employer & employee between management No.1 & 2 and the said person and on account of such employment of the said person. Meaning thereby no relationship of employer & employee exists between management No.1 & 2 and workman rather the workman was contract employee of the contractor i.e. management No.3, M/s Sudarshan Facilities and this fact is also mentioned in the document Exhibit 'W1', placed on record by the workman herself, information under Right to Information Act, 2005 wherein in reply to Question No.1 "**Appointment details of Anju daughter of Piary Lal working as Safai Karamchari in your office since 2005**" it is stated that Ms. Anju daughter of Piary Lal was not given appointment by this office, she was engaged by the contractor. Secondly, Ms. Anju while stepping into the witness box as AW1 herself admitted that there was a contract between M/s Sudarshan Facilities Services Private Limited formerly called as Keshav Security Services Private Limited and Municipal Corporation, Chandigarh. She also stated that she did not know whether the contract of management No.3 has expired on 28.02.2017. Further it is also admitted by the workman that she was replaced in the year 2015 and it is also admitted by herself that she has been paid salary until October 2015 which was paid by management No.3 to her. Meaning thereby she herself controverted her own statement that she have been retrenched by management No.1 rather she was replaced by management No.3 service provider on the complaint made by the Sanitary Inspector report for the workman stating in her argument that *vide* Exhibit 'M8' dated 16.11.2015 her retrenchment was passed by management and Exhibit 'M9' dated 20.11.2015 *vide* which it was conveyed by management No.3 whereas perusal of Exhibit 'M8' it is clear that it is not retrenchment order

rather in its request was made to replace the workman with any suitable worker and vide Exhibit 'M9' Shri Sourabh Kumar S/o Shri Suresh Kumar has been appointed as Safai Karamchari in place of workman Anju D/o Shri Pyare Lal.

16. Further the Contract Labour (Regulation & Abolition) Act, 1970 referred by the workman is not applicable in the present case in hand as the demand notice has been raised under the ID Act. Citations **Voith Paper Fabrics India & Others Versus Presiding Officer, Industrial Tribunal-cum-Labour Court-II & Others, Haryana State Electricity Board Versus Suresh, JCB India Limited Versus Omi Singh & Others, Hari Palace Ambala City Versus Presiding Officer, Labour Court & Another, Kuldeep Singh Versus Presiding Officer, Labour Court, Panipat & Others and Magar Dass Versus Industrial Tribunal, Patiala & Others (supra)** referred by the workman are not directly applicable to the present case in hand as citations referred are with regard to termination / retrenchment of the workman and relationship of employer-employee whereas in the present case there is no retrenchment of the workman rather it is the case of replacement of the workman after willful absence of the workman.

17. As regards the affidavit Exhibit 'MW2/A' tendered by MW2 is concerned he is simply stating that the workman is employee of management No.1 & 2 and he is giving no objection if the workman is restored by management No.1 & 2 but his evidence carry no weight as first all it is admitted by himself that period of agreement was from 01.07.2015 to 30.06.2016. He received letter from the Medical Officer of Health that the workman is absenting from duty since 02.11.2015 and she be replaced from the service. Moreover, the contract of M/s Sudarshan is not in existence as the contract has already expired on 28.02.2017 so no reinstatement can be made. This is not the case of retrenchment rather it is a replacement of the workman in terms of agreement.

18. From the above said discussion, in my view the present case is not a case of retrenchment rather it is the case of replacement of the workman and the workman had already taken dues till October 2015 and 01.11.2015 was holiday and from 02.11.2015 the workman was absent from duty. Upon which absent report of the workman made by Shri Harkesh - S.J. Thereafter absent report of the workman was sent to the contractor i.e. management No.3 and request for replacement was made and replacement of the workman was provided by management No.3. There is no retrenchment in the present case and there is no violation of provisions 25-F of the ID Act. The workman has failed to prove that her services were terminated illegally by the management. This issue is decided against the workman and in favour of the management.

Relief :

19. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .

The 1st June, 2021.

(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0095

Secretary Labour,
Chandigarh Administration.

**CHANDIGARH ADMINISTRATION
LAW AND PROSECUTION DEPARTMENT**

Notification

The 26th July, 2021

No. LD-2021/11220.—In supersession of the notification issued *vide* No. LD-2006/11247, dated 27th October, 2006, the Adviser to the Administrator, UT, Chandigarh is pleased to reconstitute the Departmental Promotion Committee of the following for consideration of promotion to Group B posts in Law and Prosecution Department of Chandigarh Administration :—

- | | | |
|---|----|----------|
| 1. Principal Secretary/Secretary Law
Chandigarh Administration | .. | Chairman |
| 2. Legal Remembrancer-cum-
Director of Prosecution,
Chandigarh Administration | .. | Member |
| 3. Additional Secretary Home/
Joint Secretary Home,
Chandigarh Administration | .. | Member |
| 4. Representative of SC category from
Group A Post (preferably from Law &
Prosecution Department) | .. | Member |

Chandigarh :
The 6th June 2021.

MANOJ PARIDA, IAS,
Adviser to the Administrator,
U.T., Chandigarh.

CHANGE OF NAME

I, Vaibhav Sony, S/o Waris, R/o H. No. 3275/B, Sector 24-D, Chandigarh, have changed my name from Vaibhav Sony to Isacc Waris Sony.

[374—1]

I, Nandini, D/o Waris, R/o H. No. 3275/B, Sector 24-D, Chandigarh, have changed my name from Nandini to Adriel Waris Sony.

[375—1]

I, Sanjeev Kumar, S/o Gurdas Ram, R/o House No. 3, Old Power House, Timber Market, Sector 26, Chandigarh, have changed my name to Sanjiv Kumar.

[376—1]

I, Pirthi Ram, S/o Puli Ram, R/o # 378, Milk Colony, Dhanas, Chandigarh, have changed my name from Pirthi Ram to Firtu Ram.

[377—1]

मैं रिन्कू कुमार, पुत्र अर्जुन सिंह, मकान नं. 408, फेज - 1, रामदरबार, चंडीगढ़ ने अपना नाम रिन्कू से बदलकर रिन्कू कुमार रख लिया है।

[378—1]

I, Bindu Lalit, D/o Sh. Lalit Mohan Gulati, R/o # 3489, Sector 35-D, Chandigarh, have changed my name to Supriya Gulati.

[379—1]

I, Arti, W/o Ved Parkash, Residence 6258-B, Sector 56, Chandigarh, have changed my name to Vijay Laxmi.

[380—1]

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